

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

EDGAR COUNTY WATCHDOGS,

Plaintiff,

v.

NAPERVILLE TOWNSHIP,

Defendant.

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2019MR000220



COMPLAINT

NOW COMES Plaintiff, EDGAR COUNTY WATCHDOGS, by its undersigned attorneys, LOEVY & LOEVY, and brings this suit to overturn Defendant NAPERVILLE TOWNSHIP's refusal, in willful violation of the Illinois Freedom of Information Act, to respond to Plaintiff's Freedom of Information Act requests related to the Naperville Road District. In support of its Complaint, Plaintiff states as follows:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act ("FOIA"). 5 ILCS 140/1.

2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of

government activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

3. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/3.

4. Under FOIA Section 11(h), “except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.”

PARTIES

5. Plaintiff EDGAR COUNTY WATCHDOGS ("ECW") is the FOIA requester in this case.

6. Defendant NAPERVILLE TOWNSHIP is a public body located in DuPage County, Illinois.

JANUARY 21, 2019 FOIA REQUEST

7. On January 21, 2019, ECW requested “1. Copy of all Naperville Township attorney invoices since Jan 2017; 2. Copy of all Naperville Township Road District attorney invoices since Jan 2017; 3. Copy of all Naperville Township Road District credit/debit/p-card statements since Jan 2017; 4. Copy of all Naperville Township elected/appointed/employee emails referencing road district consolidation/merging since Jan 2017; 5. Copy of all Naperville Township Road District elected/appointed/employee emails referencing road district consolidation/merging since Jan 2017; 6. Copy of all payments from the Township to any attorney or legal firm since Jan 2017; 7. Copy of all payments from the Township Road District to any attorney or legal firm since Jan 2017.” A true and correct copy of the request is attached

as Exhibit A.

8. On February 2, 2019, NAPERVILLE TOWNSHIP responded, producing the invoices containing the number or hours billed and the associated fees for the requested matter but subject to redactions under FOIA Section 7(1)(m). Other records were also produced but redacted subject to FOIA Sections 7(1)(b) and 7(1)(f). A true and correct copy of the email is attached as Exhibit B.

9. On February 7, 2019, ECW asked NAPERVILLE TOWNSHIP to unredact the legal bills except for permissible redactions and the credit card statements except for signatures. A true and correct copy of the email chain is attached as Exhibit C.

10. On February 18, 2019, NAPERVILLE TOWNSHIP responded, stating that it was upholding its original redactions. Ex. C.

COUNT I – JANUARY 21 FAILURE TO PRODUCE RECORDS

11. The above paragraphs are incorporated by reference.

12. NAPERVILLE TOWNSHIP is a public body under FOIA.

13. The records sought in ECW's FOIA request are non-exempt public records of NAPERVILLE TOWNSHIP.

14. NAPERVILLE TOWNSHIP violated FOIA by improperly redacting the records provided in response to ECW's FOIA request.

COUNT II – JANUARY 21 WILLFUL AND INTENTIONAL VIOLATION OF FOIA

15. The above paragraphs are incorporated by reference.

16. NAPERVILLE TOWNSHIP is a public body under FOIA.

17. The records sought in ECW's FOIA request are non-exempt public records of NAPERVILLE TOWNSHIP.

18. NAPERVILLE TOWNSHIP willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.

WHEREFORE, ECW asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that NAPERVILLE TOWNSHIP has violated FOIA;
- iii. order NAPERVILLE TOWNSHIP to produce the requested records;
- iv. enjoin NAPERVILLE TOWNSHIP from withholding non-exempt public records under FOIA;
- v. order NAPERVILLE TOWNSHIP to pay civil penalties;
- vi. award Plaintiff reasonable attorneys' fees and costs;
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Joshua Hart Burday

Attorneys for Plaintiff
EDGAR COUNTY WATCHDOGS

Matthew Topic
Joshua Burday
Merrick Wayne
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com
Atty. No. 26796

From: [John Kraft](#)
To: ["NateS@NapervilleTownship.com"](mailto:NateS@NapervilleTownship.com)
Subject: FOIA Request (Naperville Township and Naperville Township Road District) - 1-21-2019
Date: Monday, January 21, 2019 10:00:00 AM

In accordance with the Freedom of Information Act I am requesting the following.

If you are not the FOIA officer, you are required to immediately forward this request to the appropriate FOIA officer as required by statute [5 ILCS 140/3(c)].

I am requesting the following information under the Freedom of Information Act:

1. Copy of all Naperville Township attorney invoices since Jan 2017.
2. Copy of all Naperville Township Road District attorney invoices since Jan 2017.
3. Copy of all Naperville Township Road District credit/debit/p-card statements since Jan 2017.
4. Copy of all Naperville Township elected/appointed/employee emails referencing road district consolidation/merging since Jan 2017.
5. Copy of all Naperville Township Road District elected/appointed/employee emails referencing road district consolidation/merging since Jan 2017
6. Copy of all payments from the Township to any attorney or legal firm since Jan 2017.
7. Copy of all payments from the Township Road District to any attorney or legal firm since Jan 2017.

Electronic copies are requested.

This is not a commercial request.

I, and the organizations I represent (Disclosure News Magazine, Edgar County Watchdogs Inc, and American Watchdogs Inc), qualify as both media and non-profit under the definitions in Section 2 (c-10) ("Commercial purpose"), and the principal purpose of the request is to access and disseminate information concerning news and current or passing events, or for articles of opinion or features of interest to the public.; Section 2 (f) ("News media") as an Investigative Reporter for Disclosure News Magazine, an online and printed newspaper, and an Investigative Reporter for the Edgar County Watchdogs, an online news site, and am engaged in making news reels and other motion picture for public viewing, and as a news service to provide news and data to news organization(s) and nonprofits; Section 2 (g) ("Recurrent requester"); and Section 2 (h) ("Voluminous request") of the Freedom of Information Act, for the purposes of being exempt to the provisions of Section 3.1 (Requests for commercial purposes); Section 3.2 (Recurrent requesters); Section 3.6 (Voluminous requests), and Section 6 (Authority to charge fees).

This is also a request for fee waiver, should any fees be imposed, as this information bears on the public business of this public body and will be used to inform citizens of the actions of their public officials and employees, of their rights and responsibilities, of news and current or

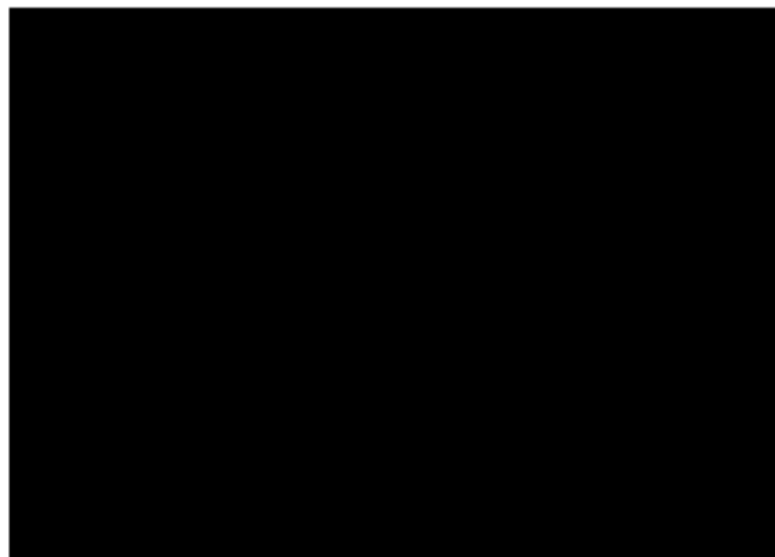
Exhibit A

passing events, and for articles of opinion or features of interest to the public. The principal purpose of this request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public and is not for the principal purpose of gaining a personal or commercial benefit.

Thanks,

John Kraft

Edgar County Watchdogs



From: [Nathanael Sippel](#)
To: [John Kraft](#)
Subject: 1/4 Freedom of Information Act Request Documents
Date: Friday, February 01, 2019 5:41:38 PM
Attachments: [Emails - Clerks Office Redacted.pdf](#)
[Emails - Highway Department Redacted.pdf](#)

February 2nd, 2019

Re: Freedom of Information Act Request – 1 of 4 Emails

Dear John Kraft,

Thank you for writing to the Township of Naperville (“Township”) with your request for information pursuant to the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1 et seq.

Your FOIA request seeks the following:

1. *“Copy of all Naperville Township attorney invoices since Jan 2017.*
2. *Copy of all Naperville Township Road District attorney invoices since Jan 2017.*
3. *Copy of all Naperville Township Road District credit/debit/p-card statements since Jan 2017.*
4. *Copy of all Naperville Township elected/appointed/employee emails referencing road district consolidation/merging since Jan 2017.*
5. *Copy of all Naperville Township Road District elected/appointed/employee emails referencing road district consolidation/merging since Jan 2017*
6. *Copy of all payments from the Township to any attorney or legal firm since Jan 2017.*
7. *Copy of all payments from the Township Road District to any attorney or legal firm since Jan 2017.”*

Responsive documents are provided in electronic format and attached to this email. Please let me know if there are any issues opening the PDF file.

The Township is disclosing invoices containing the number of hours billed and the associated fees for the requested matter. The invoices contain information that is exempt from disclosure under section 7(1)(m) of FOIA, which exempts communications between a public body and an attorney that would not be subject to discovery in litigation, including communications covered by the attorney-client privilege. 5 ILCS 140/7(1)(m). However, the Township is withholding information on the invoices that relates to confidential communications between the Township and its law firm. If disclosed, this information would directly or indirectly reveal the substance of these attorney-client confidences.

Other documents may be redacted for the following reasons:

7(1)(b): Personal telephone numbers, state identification numbers, driver’s license numbers, license plate numbers, insurance policy information, VIN numbers, signatures, email addresses and home addresses. Section 7(1)(b) exempts from inspection and copying “private information, unless disclosure is required by another provision of [FOIA], a State or federal

Exhibit B

law or a court order.” 5 ILCS 140/7(1)(b).

7(1)(f): Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated.

If you believe that the Township’s decision constitutes a denial of your request, you have a right to seek review of the decision by contacting the Illinois Public Access Counselor at the Office of the Illinois Attorney General.

Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706
Phone: (877) 299-3642

You also have the right to seek judicial review of the denial under Section 11 of the Illinois Freedom of Information Act.

Respectfully Submitted,

Nate Sippel

Naperville Township Clerk

139 Water Street,

Naperville, IL, 60540

O: (630)-388-4404

From: [Nathanael Sippel](#)
To: [John Kraft](#)
Subject: Re: 1/4 Freedom of Information Act Request Documents
Date: Monday, February 18, 2019 5:52:57 PM

Hello Mr. Kraft,

I have received the following from our Township Legal Counsel:

The Township has carefully reviewed your objections to the redactions on the Legal Bills and Credit Cards. At this time, the Township will not be amending these documents as they are consistent with the FOIA exemptions set forth in the Response letter dated February 1st, 2019.

Sincerely,
Nate Sippel

Get [Outlook for iOS](#)

From: Nathanael Sippel <nates@napervilletownship.com>
Sent: Tuesday, February 12, 2019 4:54 PM
To: John Kraft
Subject: Re: 1/4 Freedom of Information Act Request Documents

Hello Mr. Kraft,

I will have our legal counsel review the redactions and follow up as soon as possible.

Sincerely,
Nate Sippel
Naperville Township Clerk
139 Water St
Naperville, IL 60540
Phone 630.388.4400

From: John Kraft <john@illinoisleaks.com>
Sent: Tuesday, February 12, 2019 10:16:02 AM
To: Nathanael Sippel
Subject: RE: 1/4 Freedom of Information Act Request Documents

Did you get this message?

From: John Kraft
Sent: Thursday, February 07, 2019 8:11 AM
To: 'Nathanael Sippel' <NateS@napervilletownship.com>

Exhibit C

Subject: RE: 1/4 Freedom of Information Act Request Documents

Also, along with the legal bills, please unredact all of the credit card statements except for signatures and provide them again.

Thanks,
John Kraft

From: John Kraft
Sent: Thursday, February 07, 2019 8:06 AM
To: 'Nathanael Sippel' <NateS@napervilletownship.com>
Subject: RE: 1/4 Freedom of Information Act Request Documents

Please unredact the legal bills, review permissible redactions, and send them to me again.

The redactions made are unreasonable and violate the Freedom of Information Act.

Thanks,
John Kraft
217-808-2527

From: Nathanael Sippel <NateS@napervilletownship.com>
Sent: Monday, February 04, 2019 3:38 PM
To: John Kraft [REDACTED]
Subject: RE: 1/4 Freedom of Information Act Request Documents

Hello John,

An email should be arriving shortly inviting you to view a Dropbox folder. Please let me know if there is any trouble accessing files.

Thanks,
Nate Sippel
Naperville Township Clerk
139 Water Street,
Naperville, IL, 60540
O: (630)-388-4404

From: John Kraft <[REDACTED]>
Sent: Monday, February 4, 2019 8:50 AM
To: Nathanael Sippel <NateS@napervilletownship.com>
Subject: RE: 1/4 Freedom of Information Act Request Documents

Dropbox will work.

thanks

From: Nathanael Sippel <NateS@napervilletownship.com>
Sent: Monday, February 04, 2019 7:27 AM
To: John Kraft [REDACTED]
Subject: Re: 1/4 Freedom of Information Act Request Documents

Good Morning John,

Another option is I can set up a DropBox today and share your email on the folder. This should allow you to view all the files without having to send over email.

Get [Outlook for iOS](#)

From: John Kraft [REDACTED]
Sent: Saturday, February 2, 2019 1:07 PM
To: Nathanael Sippel
Subject: RE: 1/4 Freedom of Information Act Request Documents

Nothing but the first email arrived...

From: Nathanael Sippel <NateS@napervilletownship.com>
Sent: Friday, February 01, 2019 6:11 PM
To: John Kraft [REDACTED]
Subject: RE: 1/4 Freedom of Information Act Request Documents

Hello John,

My outbox says the emails have sent, but it may be slow because of the file sizes. If the other emails do not come through I will be happy to resend in another way.

Thanks,
Nate Sippel
Naperville Township Clerk
139 Water Street,
Naperville, IL, 60540
O: (630)-388-4404

From: John Kraft [REDACTED]
Sent: Friday, February 1, 2019 6:08 PM

To: Nathanael Sippel <NateS@napervilletownship.com>

Subject: RE: 1/4 Freedom of Information Act Request Documents

I have this email, but the other 3 have not arrived yet.

Thanks,
John Kraft

From: Nathanael Sippel <NateS@napervilletownship.com>

Sent: Friday, February 01, 2019 5:41 PM

To: John Kraft [REDACTED]

Subject: 1/4 Freedom of Information Act Request Documents

February 2nd, 2019

Re: Freedom of Information Act Request – 1 of 4 Emails

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7(1)(f): Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated.

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Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706
Phone: (877) 299-3642

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Respectfully Submitted,

Nate Sippel

Naperville Township Clerk

139 Water Street,

Naperville, IL, 60540

O: (630)-388-4404